

(2011) 07 SC CK 0122

In the Supreme Court Of India

Case No : Civil Appeal No. 2602 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

Vikrambhai Maganbhai Chaudhari

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 16, 29, 29(1)

Citation : (2012) 6 AWC 6084 : (2011) 3 JCR 229 : (2011) 7 JT 138 : (2011) 3 KLT 25 SN : (2011) 6 MhLj 15 : (2011) 6 SCALE 608 : (2011) 7 SCC 321 : (2011) 2 SCC(L&S) 250

Hon'ble Judges : P. Sathasivam, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : A.S. Chandhiok, ASG, S. Wasim A. Quadri, Neha Rastogi, Saima Bakshi, A.K. Sharma and V.K. Verma, for the Appellant; Vishwajit Singh, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—This appeal by Union of India is directed against the final judgment and order dated 12.08.2005 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 16575 of 2005 whereby the High Court dismissed the application of the Appellants herein upholding the order of the Central Administrative Tribunal (in short 'the Tribunal') in O.A. No. 333 of 2004 wherein the Tribunal by its order dated 20.04.2005 had quashed and set aside Notification No. C-11011/1/2001-VP dated 29.05.2001.

2. Brief facts:

(a) On 08.06.2000, Vikrambhai Maganbhai Chaudhari, the Respondent herein, while working as M.O. Postal Assistant, Bardoli, refused to accept M.O. forms along with the amounts tendered by Shri P.N. Singh, Shri H.K. Tiwari and Shri R.C. Pande for booking of money orders. Later, Mr. K.H. Gamit, Assistant Post Master, Bardoli and his immediate supervisor instructed him to accept the above

said Money Orders in writing through office order book but the Respondent did not obey the orders. Accordingly, departmental action was initiated against him and he was suspended by order of Superintendent of Post Office, Bardoli vide Memo No. B-1/PF/VMC/2000.

(b) However, on 23.06.2000, the suspension order of the Respondent was revoked and disciplinary action was initiated against the Respondent under Rule 16 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules"). Vide Memo No. P1/4(2)/05/01-02 dated 17.10.2001, the disciplinary authority awarded punishment of 'Censure' to the Respondent.

(c) Thereafter, the case was taken up for review by the Chief Post Master General, Ahmedabad under Rule 29 of the Rules and he directed the Superintendent of Post Office, Bardoli to initiate disciplinary proceedings against the Respondent under Rule 14 of the Rules and on completion send the matter to him for further action. Accordingly, a notice was issued to the Respondent.

(d) Challenging the proceedings, the Respondent filed Original Application No. 333 of 2004 before the Tribunal, Ahmedabad Bench, Ahmedabad. By order dated 20.04.2005, the Tribunal allowed the application filed by the Respondent. Aggrieved by the said order, the Appellants herein filed Special Civil Application being No. 16575 of 2005 before the High Court of Gujarat at Ahmedabad. The High Court, by impugned order, dismissed the application filed by the Appellants herein. Aggrieved by the said order and judgment, the Appellants herein have filed this appeal by way of SLP before this Court.

3. Heard Mr. A.S. Chandhiok, learned ASG for the Appellants. Mr. Vishwajit Singh, learned Counsel filed appearance on behalf of the Respondent but none appeared at the time of hearing.

4. Mr. Chandhiok, learned ASG after taking us through Rule 29 of the Rules submitted that the Tribunal was not justified in quashing the Notification dated 29.05.2001 and the High Court has also committed an error in confirming the same. He further submitted that the High Court and the Tribunal ought to have appreciated that the Notification in question does not become bad merely because the time limit has not been provided and according to him, even though Rule 29(1)(vi) provides that such order shall also specify the time within which this power should be exercised in view of Clause (v) which provides six months' outer limit for reviewing the order, the ultimate conclusion of the Tribunal and the High Court cannot be sustained.

5. Inasmuch as the Tribunal and the High Court granted relief in favour of the Respondent on the basis of the interpretation of Rule 29(1)(vi) and the Notification dated 29.05.2001, it is desirable to refer the same. The Notification reads as under:

Ministry of Communications [Department of Posts]

New Delhi, the 29th May, 2001

NOTIFICATION

No. So.... In exercise of the powers conferred by Clause (VI) of Sub Rule (1) of Rule 29 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby specifies that in the case of a government servant serving in the Department of Posts, for whom the appellate authority is subordinate to the authority designated as the Principal Chief Postmaster General or the Chief Postmaster General (other than the Chief Postmaster General of Senior Administrative Grade) of a Circle, the said Principal Chief Postmaster General or the said Chief Postmaster General, as the case may be, shall be the revising authority for the purpose of exercising the powers under the said Rule 29.

[No. C-11011/1/2001-VP]

Sd/- [B.P. Sharma] Director (VP)

The relevant clauses of Rule 29 are as under:

(1) Notwithstanding anything contained in these Rules.

(i) the President; or

(ii) The Comptroller and Auditor-General, in the case of a Government servant serving in the India Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government Servant serving in or under the Postal Services Board and (Adviser (Human Resources Development), Department of Telecommunication) in the case of Government Servant serving in or under the Telecommunication Board); or

(iv) the Head of a Department directly under the Central Government in the case of a Government Servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board) under the control of such head of a Department; or

(v) the Appellant authority, within six months of the date of order proposed to be (revised); or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be specified in such general or special order;

may at any time either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these rules....

(2) No proceeding for revision shall be commenced until after

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred.

6. As rightly observed by the Tribunal, the above Sub-rule (1) of Rule 29 indicates 6 categories of revisional authorities. If we go further it shows that while no period is mentioned in Sub-clauses (i) to (iv), Sub-clause (v) refers to a period of six months from the date of order proposed to be revised. Since order was passed by exercising power under Sub-clause (vi), we have to see whether in the Notification specifying an authority a time limit has been mentioned or even in the absence of the same, the outer limit can be availed by exercising power under Sub-clause (v). According to learned ASG, there is no need to specify the period in the Notification authorizing concerned authority to call for the record for any enquiry and revise any order made under the Rules. We are unable to accept the said claim for the following reasons.

7. It is to be noted that in cases where the appellate authority seeks to review the order of the disciplinary authority, the period fixed for the purpose is six months of the date of the order proposed to be revised. This is clear from Sub-clause (v) of sub-Rule 1 of Rule 29. On the other hand, Clause (vi) confers similar powers on such other authorities which may be specified in that behalf by the President by a general or special order and the said authority has to commence the proceedings within the time prescribed therein. Even though Rule 29(1)(vi) provides that such order shall also specify the time within which the power should be exercised, the fact remains that no time limit has been prescribed in the Notification. We have already pointed out that no period has been mentioned in the Notification. The argument that even in the absence of specific period in the Notification in view of Clause (v), the other authority can also exercise such power cannot be accepted. To put it clear, Sub-clause (v) applies to appellate authority and Clause (vi) to any other authority specified by the President by a general or special order for exercising power by the said authority under Sub-clause (vi). There must be specified period and the power can be exercised only within the period so prescribed.

8. Inasmuch as the Notification dated 29.05.2001 has not specified any time limit within which power under Rule 29(1)(vi) is exercisable by the authority specified, we are of the view that such Notification is not in terms with Rule 29 and the Tribunal is fully justified in quashing the same. The High Court has also rightly confirmed the said conclusion by dismissing the Special Application of the Appellants and quashing the Notification on the ground that it did not specify the time limit. Consequently, the appeal fails and the same is dismissed. No order as to costs.